

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
April 14, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair Sandra J. Tiffany at 7:15 a.m. on Thursday, April 14, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Sandra J. Tiffany, Chair
Senator Michael Schneider
Senator John Lee

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Shirley Parks, Committee Secretary

OTHERS PRESENT:

Scott E. Bice, Commissioner, Division of Mortgage Lending, Business and Industry
James Wadhams, Citibank; Citigroup; Nevada Mortgage Bankers Association
Spencer Judd, Home Funds Mortgage; Nevada Association of Mortgage Professionals
James C. Fitzgerald, Nevada Loan Source

SENATE BILL 433: Makes various changes relating to mortgage lending.
(BDR 54-380)

CHAIR TIFFANY:

We will open the hearing on S.B. 433. The subcommittee will go through the bill section by section.

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SCOTT E. BICE (Commissioner, Division of Mortgage Lending, Department of Business and Industry):
I have a proposed amendment to S.B. 433 ([Exhibit C](#), original is on file at the Research Library).

CHAIR TIFFANY:
Mr. Bice, what is your major opposition to the bill?

MR. BICE:
The major issue with the bill and the Division of Mortgage Lending's proposed amendments revolve around the licensure of the individual agents, of those licensees called mortgage bankers. Working with the industry for a period of time, we have put together requirements for education and other changes affecting private lending and mortgage brokers. I do not know if the mortgage bankers agree with all the changes. The most difficult issue is the licensure of the individual agents.

CHAIR TIFFANY:
To begin, it might be best to spend some time on the larger issues of opposition.

JAMES WADHAMS (Citibank; Citigroup; Nevada Mortgage Bankers Association):
I am here today representing the mortgage bankers. There is a variation to this issue that may further illustrate the only major issue between the Division of Mortgage Lending and several segments of the industry. The issue is licensing of individual agents as opposed to the proposal which would license employees. This is the only major distinction. If we are licensing agents as independent contractors, we are in agreement.

CHAIR TIFFANY:
We will start with the licensure issue.

MR. BICE:
The Division of Mortgage Lending has spent time with many trade associations this last year and a half; we have informed everyone what we want to accomplish for the industry. Part of the goal is to have the Division of Mortgage Lending continue to move forward. After looking at the issue further, we have become amenable to finding a compromise. We have not had an opportunity to speak with Mr. Wadhams or anyone in the bankers' industry. Our intention is to

provide specific criteria that will give the public confidence. We have had some discussion with the group. Instead of a licensure, there is the possibility of a registration or a certification process for the mortgage banker agents, allowing the companies to submit to us their hiring practices, certification and education requirements. We were attempting to have everyone licensed. In an effort to make this workable for all, the Division of Mortgage Lending is open to suggestions.

CHAIR TIFFANY:

Mr. Bice, is there a mortgage-broker agent in the banking industry? What would be the job description?

MR. BICE:

The mortgage-broker agent in the industry has the same function as other agents. How the company sets forth their policy may be different. The function of originating loans is the same whether you are a mortgage broker or mortgage banker.

CHAIR TIFFANY:

They originate the loans and prepare documentation.

SPENCER JUDD (Home Funds Mortgage; Nevada Association of Mortgage Professionals):

We have been working with Mr. Bice and the other groups. I have helped with the revisions on the amendment submitted by Mr. Bice. I would be willing to go through the mock-up of the amendment with the subcommittee.

CHAIR TIFFANY:

We will continue with the one issue.

MR. WADHAMS

It is helpful to reset the stage and give a different approach to the issue. Remember, the banking industry is on this playing field but cannot be licensed. Any bank or credit union cannot be licensed. That element of the playing field which is substantial, specifically with residential property lending, cannot be licensed. When we speak of licensing everyone, please understand that we are only licensing some people. The fundamental problem is moving forward with the accountability that is increased by the licensing of mortgage bankers. We think it is both redundant and unnecessary to further license employees of a

licensee. If you are licensed once, you should be held accountable and responsible for your employees. If we hired independent contractors, we would have no problem with those individuals and entities being additionally licensed. We fundamentally object to the intrusion causing more expense, not borne by the lending banks, to have their employees licensed once they are institutionally licensed. This is the issue that separates the banking industry from the Division of Mortgage Lending. It is not fair to establish licensure for everyone who originates loans, when we cannot. With respect to the banking industry, it would be fairer to hold those who are primarily responsible for conduct accountable for all who originate loans.

CHAIR TIFFANY:

Have you considered training? Did you determine the banks' internal training? Could this training then be an equivalent to the licensing training?

MR. WADHAMS:

We have had this discussion with Mr. Bice. He is relatively comfortable with those entities that can be licensed. They are under a federal charter and can be licensed. We have no problem with the commissioner reviewing those programs to see that the training is adequate. We have no problem with the training aspect or the background checks. This subcommittee may know that federally chartered lending institutions have requirements on background checks and training. Licensing is not required but merely to be held accountable. What we are attempting to do is to make sure our local entities are not disadvantaged because of more requirements.

CHAIR TIFFANY:

Would you say this is an accurate description of the issues?

MR. BICE:

Yes. This is philosophically the largest difference.

CHAIR TIFFANY:

We will look at the bill and work off of this document.

KEVIN POWERS (Committee Counsel):

There is an updated color mock-up version of the bill. The date is not changed, but the document itself is updated. We received it in black and white copy. We need to work from a single document.

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MR. JUDD:

I will go through this amendment to S.B. 433 and highlight the changes for the subcommittee. We will get you the color copies today.

CHAIR TIFFANY:

What would be helpful is the section-by-section changes and whether there was agreement or not.

MR. WADHAMS:

This is the first time I have seen these changes.

CHAIR TIFFANY:

Then, you may step through them with us.

MR. JUDD:

There are no changes to section 1. It allows for the examination requirement for individual mortgage agents.

CHAIR TIFFANY:

Are there no disagreements on this section?

MR. JUDD:

No. There are criteria for this to allow the commissioner to provide testing for mortgage brokers and agents.

CHAIR TIFFANY:

We will look at section 2.

MR. POWERS:

Before we proceed, just for record so it is clear, will this testing be required of every applicant or will the commissioner have discretion to determine if testing is needed?

MR. BICE:

There will be discretion to decide.

MR. JUDD:

In section 2, there are no changes. It adds qualified employee to the language currently in the statute.

MR. BICE:

A qualified employee is defined in the *Nevada Administrative Code* (NAC) and is the responsible party over the branch office ([Exhibit D](#)).

MR. WADHAMS:

We have talked about cleaning up the language so that it is consistent and makes sense. There are examples in the document of an ambiguous nature where confusion could create conflict. We have offered a separate licensing chapter for private moneylenders because they are doing something completely different.

CHAIR TIFFANY:

You want to create a chapter for the private lending organizations. I am not so sure we are equipped today, in 20 minutes, to handle this major change. Remember, this bill will be going to the Assembly and there will be time for a change like this. We can note on the bill to ask for this change when we send it over to the Assembly.

MR. WADHAMS:

I just wanted to make the point for the record.

CHAIR TIFFANY:

Are there changes in section 3?

MR. POWERS:

Senator Heck previously raised the issue of no definition for a qualified employee. This will not add a definition. You are obviously relying on the regulatory definition. There will be some questions with this issue.

CHAIR TIFFANY:

Shall we add a definition?

MR. BICE:

We certainly can take the definition from the NAC and add it to the amendment, if this would be appropriate.

MR. POWERS:

To the extent that it can be adapted to the statute, it can be added.

CHAIR TIFFANY:

What is in section 3?

MR. JUDD:

Section 3 adds some clarification that the Division shall not issue an initial license to a broker. The broker will not have to take the education requirements if they already have a license, but will be required to take the test.

SENATOR LEE:

I have securities and insurance licenses with continuing education. I am a mortgage investor as well. This section is onerous to employees. The business is detailed, but in certain areas of education, I believe an eight-hour course would accomplish much of what we are considering today. A two-day course on state law and ethics would be adequate. Five hours of ethics classes is quite a lot. A one-day course would solve the education problems. Would this continuing education be every year? What is the idea behind continuing education?

MR. BICE

The course would be 10 hours a year. This is the current statute. We were making some changes and reached a compromise. Real estate is 24 hours every 2 years. Considering the up-front criteria, I do not believe anyone could learn the business in an eight-hour period.

SENATOR LEE:

No. They learn the business from all sorts of experiences over a period of time.

MR. WADHAMS:

I am not sure if we are discussing Mr. Bice's amendment or Mr. Judd's amendment. Mr. Judd is presenting Mr. Bice's amendment. I am not sure who will address my concerns.

MR. JUDD:

The amendment we are discussing is the one the brokers agreed to make.

MR. BICE:

We have discussed all these issues. We are trying to reach a common ground.

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MR. JUDD:

The only change to this section is the language "initial" and "broker."

MR. WADHAMS:

To the extent this amendment applies to mortgage agents, we have no objection.

MR. BICE:

The intent of the Division of Mortgage Lending is to require licensing of all agents.

CHAIR TIFFANY:

If we decide that the employee will not need to be licensed, this would not apply. If we decide they do need a license, then it would apply. I believe eight hours of education requirement would be inadequate.

SENATOR LEE:

For the record, there is no test. You simply go listen and receive a certificate. Am I reading this correctly?

MR. BICE:

We are implementing a test.

CHAIR TIFFANY:

At the end of the 30-hour course, there is a test.

MR. BICE:

For new people, there is an education program and then upon completion, a test. For the currently licensed, we are giving an option of taking the test and passing it without the hours of classes. For the record, if someone wants to change the education-hours' requirement, that is their choice. Picking hours and categories was to provide for the questions that relate to the topics of the classes. We have a test; although, the intent was to have a testing company, of which there are many, do the actual testing.

CHAIR TIFFANY:

We will look at section 4.

MR. JUDD:

This section is completely deleted from the amendment.

CHAIR TIFFANY:

Are there changes to section 5?

MR. JUDD:

Section 5 has one small change from the previous presentation on Thursday. The language regarding a contract processor has been deleted. This will be the same deletion as section 6.

MR. WADHAMS:

I am not sure that I understand the consistency of the philosophy. If the philosophy is accountability for people who are dealing with mortgage lending now excludes people who are external to the licensee and excludes them from control that seems to be inconsistent. At this point this will not apply to my client, but I do not understand how we are changing the philosophy.

CHAIR TIFFANY:

We will now look at section 7.

MR. JUDD:

Section 7 of the bill is an area where I am not sure if all the changes are completed. The original bill suggested changing a word to read "residential" instead of "residence" to make it clear in the statute. The changes I made to section 7 of [Exhibit C](#) are changing section 11, subsection 1, paragraphs (i) and (j). The language in paragraph (i) would read, "finally adjudicated."

MR. WADHAMS:

We have a problem with this notion of a residence address in section 7 of [Exhibit C](#). I will draw your attention to paragraph (d), subsection 1, section 7; the residential address is required not only of the qualifying employee or individual responsible for the conduct but, for every officer and director. The entities that I represent are national corporations with hundreds of officers and dozens of directors. I have a continuing objection to that kind of inclusion in the licensing process. The residence address of these people seems increasingly irrelevant and is probably an invasion of their privacy. You have their business address. These new changes just added, section 7, subsection 11, paragraph (i), require each of these people from wherever they are located to report any

adjudication to Mr. Bice and in paragraph (j) it calls for the written complaints. It could be impractical to track all these complaints that may be lodged with some entity and require significant time and research on the part of a licensee. Section 7 of [Exhibit C](#) is a problem for me in that it requests a vast, irrelevant array of people from whom very personal and private information is requested. There should be a correction as to what is to be reported.

MR. BICE:

The Division of Mortgage Lending has no problem with Mr. Wadhams' last statement regarding actions on complaints. The other issue he brought up has been in the statute for quite a while.

CHAIR TIFFANY:

Do you have problems if we clean up the language in section 7 of [Exhibit C](#) regarding the personal and private information?

MR. BICE:

I will be happy to work out the details with Mr. Wadhams.

CHAIR TIFFANY:

Mr. Powers, do you have some suggestion as to how we would do this?

MR. POWERS:

Mr. Wadhams' concern is that none of this information is needed by anyone. There is no reason we would need the information. We could rely on some of the language used earlier. Look on page 4, section 7, subsection 1, paragraph (d), subparagraph (1) which states, "... who may exercise significant control over the operation of the mortgage broker." We can modify paragraphs (i) and (j) of subsection 1 to say any of those persons listed who may exercise significant control over the operation of the mortgage broker in this State.

CHAIR TIFFANY:

Will this language change help?

MR. JUDD:

Section 8 of [Exhibit C](#) is basically to have the same changes as section 7. In section 9, the change we would like to see is on page 5, subsection 1, "A license as a mortgage broker issued pursuant to this chapter expires every two years" This would be a two-year licensing instead of every year, and there

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would be a continuing education requirement of 12 hours every year, or 24 hours at renewal.

MR. BICE:

Mr. Judd, the specifics are incorrect. We were speaking of the mortgage-broker agents. I was not aware we were talking about the mortgage-broker license as well.

MR. JUDD:

We have a misunderstanding. We thought it was both broker and agent every other year.

CHAIR TIFFANY:

Can you tell us how often the real estate agents, brokers and agents become licensed? Is it every other year?

MR. JUDD:

Real estate agents receive their license every other year.

MR. POWERS:

To clear the record, if we are talking about real estate agents, there was a change last Session. When real estate agents are initially licensed, it is for a one-year period, and thereafter it is a two-year period.

CHAIR TIFFANY:

Would this be agent and broker?

MR. POWERS:

Yes. This is correct.

CHAIR TIFFANY:

Write the language the same as the real estate agents. The subcommittee is leaning this way.

MR. JUDD:

We have no problem with this language change.

MR. BICE:

In section 9, the language is the same on renewal fees.

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CHAIR TIFFANY:

We will look at section 10; I see no changes. What is section 11?

MR. BICE:

Section 11 is stricken having to do with escrow language.

CHAIR TIFFANY:

Are there changes to section 12?

MR. JUDD:

There are no changes to section 12.

MR. WADHAMS:

On section 12, we recommend deletion for the same reasons as stated earlier. This section would seek to license independent agents and employees. We oppose this section.

CHAIR TIFFANY:

Mr. Powers, if we make a motion and decide to take the employee out of the licensing requirement, would this section be intact or completely deleted?

MR. POWERS:

As I understand this proposal, pages 7, 8, 9 and the top of 10 of [Exhibit C](#) are directly related to licensing mortgage agents who are employed by or independent contractors of a mortgage banker as referred in chapter 645E of the *Nevada Revised Statutes* (NRS). If you decided to not license agents of mortgage bankers, then those sections would be removed entirely.

CHAIR TIFFANY:

This will be a policy decision we will make. How about the top of page 10 in the section left blank? What is the rest of page 10 all about?

MR. POWERS:

It looks like those sections on page 10 also deal with mortgage agents as well. All of page 10 is about the mortgage bankers under chapter 645E of the NRS.

CHAIR TIFFANY:

What about page 11?

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MR. POWERS:

All of it is related to licensing mortgage agents.

MR. WADHAMS:

This is a subtle but important distinction. We do not object to only associating with independent contractors who are licensed as mortgage agents. What we object to and oppose is forcing us to license our own employees.

CHAIR TIFFANY:

We will begin on page 11 of [Exhibit C](#).

MR. JUDD:

There are no changes on the remainder of page 11. On page 12, there are several additions to the language. The word "adjudicated" has been added and the addition of the term "member" to paragraph (h). The same issues are addressed here as indicated earlier.

MR. WADHAMS:

I want to be sure the record is clear. Page 12, paragraphs (h) and (i) are grossly overbroad, asking for information about individuals that is very personal and private. We have no problem reporting any decisions by federal or state agencies regarding an individual.

CHAIR TIFFANY:

I would agree with this clarification. Mr. Powers, how will this change the look of page 12, paragraphs (h), (i) and (j)?

MR. POWERS:

This is the same issue as discussed earlier, that is, the scope of information we are going to require and from whom we are acquiring it. I am not sure anyone has found a resolution to this issue.

CHAIR TIFFANY:

If the subcommittee agrees with Mr. Wadhams' clarifications, how would this change these issues? The nexus we have solved. It is now the scope of information we are exploring.

MR. POWERS:

We would need to find qualifying language for civil or criminal proceedings and then, with respect to paragraphs (h) and (i) dealing with written complaints, try to narrow the focus of the language to a particular type of procedure or complaint.

MR. WADHAMS:

The qualifying language would certainly apply to any action involving a fiduciary, financial or any other conviction or adjudication based upon the handling of money. These would be crimes relating to money, civil fraud or something of this nature. This would be pertinent to the issue.

CHAIR TIFFANY:

Near the bottom of page 12 "forgery, ... or any foreign jurisdiction." This is the scope of information the subcommittee would approve. Mr. Powers, will this work with your thoughts about the language?

MR. POWERS:

If this is what the subcommittee would like to achieve, then yes, we can do this. Just for the record, the changes being made here are the same as we have made earlier. They would be parallel to chapter 645B of the NRS adding parallel provisions to chapter 645E of the NRS.

CHAIR TIFFANY:

The subcommittee wants to see the nexus and the scope of information resolved.

SENATOR LEE:

For page 12, subsection 2, paragraph (k), the change states, "The location ... zoned primarily for residential use." This means there will be no small broker who works from a home-based business. I would challenge this language. I want to preserve the home business if possible. There are a group of people who work from their homes and have few, if any, other employees.

MR. BICE:

We previously recognized that the language contains provisions for those people who are currently licensed to remain with their business intact. This language would not give licenses to new home businesses. The distinction is the license location and where the activity is taking place. It does not prohibit people from

functioning out of their homes. It is the licensing of that location as a principal office or branch.

SENATOR LEE:

I want to address the small licensed agent who works from home. There is a place for these types of businesses, not just grandfathered into the amendment.

CHAIR TIFFANY:

The real estate people have their license hanging in the commercial business location. They may work out of their homes as well.

JAMES C. FITZGERALD (Nevada Loan Source):

I have operated from my home for 15 years. I have never had any problems. My neighbors have no idea what I do. I meet less than 10 percent of my clients face to face. I have been able to travel to their location or handle my business electronically. I do not obtain my business from Web sites or through the Internet. I receive leads through word of mouth. People contact me and I have had no problems with my business.

CHAIR TIFFANY:

We will make a statewide policy on this issue. I have had no problem with the home-based businesses. I do like the idea of real estate agents hanging their licenses in a broker's office. They still may work from their homes.

MR. POWERS:

We need a distinction here. These are the brokers.

CHAIR TIFFANY:

Yes. A broker would not necessarily have an office. This would be a decision for a broker licensee to work from a home-based office.

MR. BICE:

The agents would hang their licenses if they are employees or independent contractors, where the license contract is active. They would be supervised by a broker.

MR. JUDD:

I currently run my business out of my home. I am restricted by my business license from having employees.

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SENATOR LEE:

There can be no employee according to the business license.

MR. FITZGERALD:

I do not have an assistant or employee; I do all my own work. If an agent is associated with me, they are to do the same thing. I would supervise any work they do.

SENATOR SCHNEIDER:

Real estate brokers can work from their homes, but if they had employees, they would need a business address. I suggest that we take a look at this and consider having one or two employees as requiring no business address and then find some level where they would then need a business address; that is for more than two employees.

CHAIR TIFFANY:

Mr. Powers, would there be a statute on this particular subject?

MR. POWERS:

In the statute it is doubtful, but it may be in the regulations.

CHAIR TIFFANY:

If the subcommittee is in agreement about a particular point, for instance the direction Senator Schneider just suggested, would it be appropriate to add it to the amendment?

MR. POWERS:

It would be. We would limit the number of mortgage agents who are allowed to be associated with the mortgage broker working from a residential address.

MR. FITZGERALD:

This would be fair. There is a zoning regulation prohibiting people from employing full-time employees who work out of a home office in residential neighborhoods.

SENATOR LEE:

A broker can work from their home. If they have an employee such as a sales agent, they would have to have a commercial address.

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CHAIR TIFFANY:

I understand that it would be one or more employees.

MR. JUDD:

The next changes from the amendment would begin on page 15, section 13. As I review the amendment, there are other changes to be made. This section needs to be revised. It is an exemption from the 30 hours of pretest.

CHAIR TIFFANY:

Is this the issue of already holding a current license as an agent and broker for two years?

MR. JUDD:

They would automatically be exempted from the education requirement prior to licensing. On page 16, there are some changes but delete section 12. On page 17, there are more changes starting at section 24 and continuing down the page. This is all new language to the amendment. It changes the continuing education and who may certify this requirement. It takes out an exemption for those courses certified by the National Association of Mortgage Brokers. It will give the commissioner, Division of Mortgage Lending or an education committee the opportunity to certify who may provide continuing education. Continuing on page 17, section 25 allows continuing education of one-hour courses. Currently, the courses are two-hours long. On page 17, the next section is unnumbered. It changes the length of the mortgage broker's license expiration date.

MR. BICE:

This may be a moot point considering the earlier discussion. The subcommittee has agreed to adopt different language.

CHAIR TIFFANY:

The subcommittee is leaning toward licensing one year for the first year and then renewal every two years.

MR. JUDD:

I will add a clarification; the annual renewal fee is the same each year. On page 18, paragraphs (a) and (b), section 16 adds some clarification to the amendment which includes a yearly examination for each mortgage broker with a satisfactory rating, and they have had no significant adverse change in financial conditions. On page 18, section 17 is amended to read as follows: "If

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a mortgage broker ... those accounts must be audited." On the same page, section 18 is amended as follows: "Each mortgage broker ... upon the request of the Commissioner."

CHAIR TIFFANY:

I did not see the issue of three separate licenses. Did we decide on this? Is it in the amendment?

MR. BICE:

We were trying to discuss S.B. 433 with the Division of Mortgage Lending's amendments and all the changes to those amendments. What was discussed with the working group is a separate document that Mr. Wadhams splits out and rewrites some of the current statutes ([Exhibit E](#), original is on file at the Research Library).

CHAIR TIFFANY:

If there are three different licenses, Mr. Wadhams wants one to go into a completely different chapter.

MR. BICE:

Chapter 645B of the NRS now stands, the mortgage-broker licensee may broker loans to an institutional investor or can do private money lending. It is all encompassed in one chapter. Mr. Wadhams was anticipating the concept of splitting those private moneylenders out of that chapter of law. My concern would be how to rewrite a whole new chapter of law in the short period of time we have available.

SENATOR LEE:

I have a concern with the language near the bottom of page 14, "For each violation committed by a mortgage agent ... or has assisted or offered to assist another person to commit such a violation." If a qualified employee were to do something in violation of the rules, the commissioner can impose a heavy fine. It looks like the qualified employee has been brought into the mix and will absorb the fines of the mortgage agent. What is the meaning of "exercise of reasonable diligence?"

MR. BICE:

There is a distinction between a qualified employee function and a mortgage broker. It has been defined in code but not statute. Because of this, there could

be background checks which then allowed them to originate loans without being a licensed agent. The qualified employee by nature of the job function, for example originating loans, may be subjected to an individual fine. The person doing the action, in the Division of Mortgage Lending's opinion, should be the one responsible for those actions.

Exercising reasonable diligence by code and regulation has been defined by what the Division of Mortgage Lending believes would be adequate control and supervision over the agents. The amended language in this section would mean due diligence according to regulation.

SENATOR LEE:

The agent, for example, might make a material misrepresentation in the field and when the agency discovers this has occurred, they would then have the authority to penalize the qualified employee for that agent's indiscretion. This is language that hopefully would take cautious administration.

MR. BICE:

The licensure of any individual agent brings with it the status of being a person responsible for that office. It is the same standard, as well, for the ownership, management or director of the company. The majority of these administrators are all in agreement. A company should be responsible for the conduct of all its employees. Industry wide there is a large amount of mortgage fraud, and Nevada has one of the highest fraud ratings in the nation. The Division of Mortgage Lending's intent is to basically put a stop to fraudulent practice. This is one of the important reasons for the individual licensure.

SENATOR LEE:

I have problems with the language regarding the qualified employer, but I will address it later.

CHAIR TIFFANY:

What would you like to see happen with this section?

SENATOR LEE:

I suggest the business make sure all the finances are in good shape as would be expected. The qualified employer would refer the circumstances and the agent to upper management for further inquiry and penalties through the Division of Mortgage Lending.

MR. POWERS:

If the subcommittee decides mortgage agents and qualified employees under chapter 645E of the NRS should not be licensed, this provision would no longer be in the amendment or the bill.

MR. WADHAMS:

The policy problem that Senator Lee has brought to our attention is the whole notion of "piercing the corporate veil." This is the lawyers' way of addressing questions. This Committee and the counterparts in both Houses have been reluctant to do this as it would change longstanding policies in Nevada. I will suggest to you this has been done historically, but think carefully as to whether it should be perpetuated if it has been in the law. Going through the corporate veil to punish certain individuals could be a difficult process.

CHAIR TIFFANY:

Would the Martha Stewart case be an example of "piercing the corporate veil?" The individual broker worked for a huge firm. He was the one on trial.

MR. WADHAMS:

Precisely the point, it was a criminal prosecution of an individual. As Mr. Bice points out, there are people who commit fraud. This would go to another branch of government, not to an administrative agency. Let the justice system take action on this criminal act.

MR. BICE:

The intent of the Division of Mortgage Lending is to write good laws that hold people responsible for their actions and continue to move forward making progress with these issues. This is a people business, and when handling loans, agencies need to be realistic about the way they do business.

CHAIR TIFFANY:

Regarding the fine on page 14, making the larger decision as to whether an employee has to be licensed or not would solve this debate.

MR. POWERS:

If you vote no to licensing the employee, it will solve the debate because the issue will no longer be before the subcommittee. If you vote to have licensure of mortgage agents, as specified in chapter 645E of the NRS, then the issue is still on the table. I will point out that page 14, subsection 4 is identical to existing

law in chapter 645B of the NRS dealing with mortgage agents and mortgage brokers. If we license mortgage agents as specified in chapter 645E of the NRS, it brings similar laws in both chapters.

MR. BICE:

We are not creating anything new; we are attempting to refine the issues and make them usable to the Division of Mortgage Lending and the industry. Our goal is to have equivalency between the chapters in the NRS.

CHAIR TIFFANY:

We have looked at the definition of a qualified employee. We agreed on continuing education. The licensing and renewal deadlines were accepted. We changed the reporting for the nexus and scope of information. There was a consensus on the home-based business with more than one employee. We have talked about the penalty fines. Is there anything I may not have mentioned?

MR. POWERS:

That will cover everything. I would ask the subcommittee, if they choose to move forward, to recommend to the full Senate Committee on Commerce and Labor to amend and do pass. We direct the parties before the subcommittee to prepare a final document that reflects the issues discussed today.

MR. WADHAMS:

We have some very simple amendments in addition to those offered by the brokers ([Exhibit F](#)). One has already been addressed, to delete section 12 of the Division of Mortgage Lending's proposed amendments. Another is to delete sections 10 and 28 of the bill itself. If these two sections stand, they delete the exemptions for insurance companies from making loans in this State without additional licensure. Insurance companies are a major component of the financial capital on which this State relies. The third amendment is to correct a reference in the NRS 645E.100 to delete the requirement that mortgage bankers have two licenses to perform the same function. This is the substance of my amendments.

MR. BICE:

I will be happy to work with any group about amending and rewriting the statutes for the next Session. I have not seen the document to which he referred.

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SENATOR SCHNEIDER:

Mr. Wadhams, who do you represent?

MR. WADHAMS:

I represent Citigroup and Nevada Mortgage Bankers Association. Regarding the insurance deletion within the amendment, I represent the American Insurance Association, Anthem Blue Cross Blue Shield and Nevada Care.

SENATOR SCHNEIDER:

Under this amendment proposal, the banker's agents would not be licensed.

MR. WADHAMS:

I want to be sure this is clear. We are not licensing everyone. Some of the bankers' associations are outside the jurisdiction of this State. The federal credit union and state credit union would not be licensed.

SENATOR SCHNEIDER:

Who would be brought into this licensing process?

MR. WADHAMS:

Basically, with the expansion of the commissioner's amendments in section 12, that will require the licensing of mortgage bankers employees such as: Household Finance, Countrywide, CitiFinancial and there are other regional and local lenders involved.

SENATOR SCHNEIDER:

Mortgage bankers sell one product. This is an in-house product. Whatever the mortgage interest rates may be, this is one product. They are under the supervision of a manager who is licensed. The mortgage broker may sell an array of products, and they are all licensed. They represent many financial organizations. They may sell 20 different products.

MR. WADHAMS:

There is a difference between brokers who can go anywhere and lenders loaning their own capital through their own networks. We have no opposition to the fundamental licensing of these entities, but the duplicative licensing of their employees is where we have objections to the bill.

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MR. JUDD:

One request is that mortgage brokers would be required to have the same licensing as mortgage bankers. There are distinctions within these two groups.

MR. WADHAMS:

If we are intending to put the mortgage brokers on the same "playing field" as mortgage bankers, then we need to look at the net-worth requirements. Mortgage bankers have a substantial net-worth requirement. It is a significant investment. The section in the amendment and the bill should be examined carefully for a minimum of \$1 million net worth.

MR. BICE:

I will delineate one point. Whether a mortgage broker or mortgage banker, the function as a loan officer or lending agent is the same.

SENATOR LEE MOVED TO RECOMMEND TO THE SENATE COMMITTEE
ON COMMERCE AND LABOR TO AMEND AND DO PASS S.B. 433.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TIFFANY:

The amendments need to be prepared for the full Committee hearing. There being no other business to conduct, the meeting of the subcommittee of the Senate Committee on Commerce and Labor is adjourned at 8:36 a.m.

RESPECTFULLY SUBMITTED:

Shirley Parks,
Committee Secretary

APPROVED BY:

Senator Sandra J. Tiffany, Chair

DATE: _____